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February 22, 2010

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

**Re: Request to Review Form 477 Data and Request for Protective Order
*Inquiry Concerning the Deployment of Advanced Telecommunications
Capability to All Americans in a Reasonable and Timely Fashion, and
Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of
the Telecommunications Act of 1996, as Amended by the Broadband Data
Improvement Act, GN Docket No. 09-137
A National Broadband Plan for Our Future, GN Docket No. 09-51
Preserving the Open Internet, GN Docket No. 09-191
Broadband Industry Practices, WC Docket No. 07-52
Development of Nationwide Broadband Data to Evaluate Reasonable and
Timely Deployment of Advanced Services to All Americans, Improvement of
Wireless Broadband Subscriberhip Data, and Development of Data on
Interconnected Voice over Internet Protocol (VoIP) Subscriberhip, WC
Docket No. 07-38***

Dear Ms. Dortch:

We write to request the ability to review data collected by the Federal Communications Commission in connection with its periodic inquiry into the deployment of advanced telecommunications capability to all Americans. In particular, we request that the public be granted the opportunity to examine and analyze the data collected by the FCC on Form 477, which gathers standardized information about subscriberhip to high-speed Internet access services.¹ Our request is limited to the data reflecting subscriberhip as of December 31, 2008. Because we understand that some of the companies that provided this information may believe their submissions are competitively sensitive, we simultaneously request a protective order and ask that the Commission institute appropriate procedures for the public to review the Form 477 data.²

¹ See *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd. 7717 (2000) (*2000 Data Order*) (establishing Form 477 process); *Local Telephone Competition and Broadband Reporting*, WC Docket No. 04-141, Report and Order, 19 FCC Rcd. 22340 (2004); see also Industry Analysis and Technology Division, Wireline Competition Bureau, *High-Speed Services for Internet Access: Status as of December 31, 2008*, 2010 WL 515415 (2010) (*High-Speed Internet Access Report*).

² As set forth more fully below, we make this request without waiving our right to contest any claim of confidentiality of the requested data in the future.

BACKGROUND

I. The Commission's data collection efforts

In section 706 of the Telecommunications Act of 1996, Congress directed the FCC to encourage deployment of advanced telecommunications capability in the United States on a reasonable and timely basis.³ To facilitate this process, FCC Form 477 gathers data on subscribership to high-speed Internet access services from telephone companies, cable system operators, terrestrial wireless service providers, satellite service providers, and any other facilities-based providers of advanced telecommunications capability.

In June 2008, the Commission issued an order implementing substantial changes to these broadband data collection efforts.⁴ The Commission made these changes in the face of overwhelming public and governmental criticism of its prior collection and analysis practices.⁵ The changes increased the burden on filers by requesting more detailed

³ See 47 U.S.C. § 1302(b).

⁴ The order instituted several changes: (1) It required ISPs to report residential and business subscriber counts at the Census Tract level in more granular speed tiers. Previously, the Commission had required ISPs to report subscriber counts at the state level by technology but did not require ISPs to distinguish between residential and business lines. (2) It modified the reporting mechanism for mobile wireless connections, allowing the Commission to better capture actual subscribers of mobile wireless services as opposed to data-capable mobile wireless handsets. (3) It instituted more granular speed tiers that capture upload capabilities. See *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd. 9691 (2008) (*2008 Form 477 Data Order*); see also *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Order on Reconsideration, 23 FCC Rcd. 9800 (2008) (*2008 Form 477 Order on Reconsideration*).

⁵ See e.g., Consumers Union, Consumer Federation of America, and Free Press, Comments filed in *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38 (2007); Free Press, Reply Comments filed in *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, *International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act*, GN Docket No. 09-47, *A National Broadband Plan for Our Future*, GN Docket No. 09-51 (2009); see also United States Government Accountability Office, *Broadband Deployment Is Extensive*

information, but the Commission recognized that the value of the new, more granular data outweighed these burdens.⁶ As the Commission stated in the Final Report and Order implementing these reforms,

[t]h[e new] information will provide [it] with a highly detailed and reliable account of broadband subscription and deployment nationwide, enabling [it] to make more informed policy determinations and to support more effectively the efforts of states and others seeking to promote broadband services.⁷

Similarly, the Notice of Proposed Rulemaking recognized that

[i]mproved information about subscribership to the new communications services that are enabled by the widespread availability, and consumer adoption, of end user broadband connections would enable [the Commission] to better understand how subscriber choice among communications services is affecting the federal universal service fund, and will thereby assist us in discharging our statutory mandate to secure the viability of universal service.⁸

II. The most recent High-Speed Internet Access Report

Given that the Commission substantially intensified its data collection efforts through the 2008 Order, we expected the Commission's most recent semiannual Form 477 summary report ("High-Speed Internet Access Report") would make extensive use of these data. But the most recent High-Speed Internet Access Report contains relatively little meaningful analysis of the type enabled by the new data collection practices. In some cases it even serves to compound the problems that led to the reform effort in the first place.

We raise several concerns regarding the December 2008 High-Speed Internet Access Report here. For the most part, our concerns point at analyses that were not done. Some of the basic problems we highlight here can and should be addressed by the

throughout the United States, But It Is Difficult to Assess the Extent of Deployment Gaps in Rural Areas, GAO-06-426 (2006) (*GAO Broadband Deployment Report*).

⁶ See *2008 Form 477 Data Order*, 23 FCC Rcd. at 9697 ("[W]e disagree with commenters that reporting by census-based units is overly burdensome compared to the benefits of this reporting.").

⁷ *Id.* at 9698.

⁸ See *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Notice of Proposed Rulemaking, 22 FCC Rcd. 7760 (2008) (*2008 Form 477 Data NPRM*).

Commission in subsequent reports. We are encouraged that the Commission has noted its intention to improve its practices and has indicated that this Report is merely a “good start.”⁹ However, especially in the cases of the problems of omission, these analytical gaps underscore the importance of our request for public access to the data for independent analysis by a research community vastly larger than FCC staff.

First, the report largely follows the presentation format of past reports and thus fails to take full advantage of the new data. A few charts are new but contain information that could have been calculated under the old Form 477 collection practices.¹⁰ Unfortunately, the same problem that triggered changes to the Form 477 data collection rules (major overstatement of deployment and perceived competition)¹¹ has been basically duplicated here. This will likely lead to further confusion and misinformation among policy-makers and the general public about the true state of the broadband market. Further, and perhaps most disappointingly, the High-Speed Internet Access Report fails to include any econometric analysis or any comparative statistical tests — analysis made possible by the collection of the new granular Census Tract subscribership data.

Second, some of the Commission’s more basic analytical choices also seem questionable. For example, in describing the number of providers reporting subscribers in any given area, the Commission has chosen the following bands: 0 providers, 1-3 providers, 4-6 providers, and 7 or more providers.¹² A market that contains 1 provider functions very differently than a market that contains 3 providers, yet they are treated the same way in the Commission’s report.

Third, the Commission’s analysis of fixed-line household penetration ratios has little value. For example, Charts 17 and 18, along with Tables 11 and 12 present the “distribution” of counties or tracts by fixed-line household penetration ratios.¹³ But this presentation offers little help in policymaking because it says nothing about the distribution of the number of households in those counties or tracts. In other words, it offers little information to say that the median county has a penetration ratio of 0.44, because we are given no information as to the general distribution of population in counties. Given that in the United States, 65 percent of the total households are located in just 10 percent of all counties,¹⁴ the reporting of information about the distribution of counties paints a picture

⁹ See Posting of Sharon Gillett, “Tracking Broadband Data,” <http://blog.broadband.gov/> (Feb. 15, 2010).

¹⁰ See e.g., *High-Speed Internet Access Report* at 13-14 (charts 9, 10, and 11).

¹¹ *GAO Broadband Deployment Report*.

¹² See, e.g., *High-Speed Internet Access Report* at 30.

¹³ *Id.* at 24, 25, 26, 27.

¹⁴ U.S. Census Bureau, 2000 Census, <http://factfinder.census.gov> (data retrieved from the detailed tables). 65 percent of all households are located in 10 percent of the nation’s counties; 90 percent of all households are located in just 40 percent of counties. Thus, the Commission’s presentation of the distribution of counties gives very little useful information about the population distribution.

that offers too much information about areas of the country that contain relatively little population. Instead of reporting that the median county has a fixed household penetration ratio of 0.44, it would be more useful to know that a certain percentage of the U.S. population lives in counties that are below the national penetration average.

Fourth, many analyses leave the most interesting questions unanswered. For example, Table 11 reveals that 76.5 of counties have zero fiber-to-the-premise subscribers, meaning that 760 counties do have residential fiber-to-the-premise connections.¹⁵ But it leaves the reader wondering where these 760 counties are located and what the demographic and geographic characteristics of these counties are. Table 11 also shows that six counties have zero fixed residential broadband subscribers, but does not identify the locations of these counties.¹⁶ Presumably such information could inform broadband stimulus efforts underway at the National Telecommunications and Information Administration and at the Rural Utilities Service. Similarly, Table 11 demonstrates that nearly 16 percent of counties have zero cable-modem penetration, while only 8.6 percent of tracts have zero cable modem penetration, indicating a very specific rural cable modem deployment gap.¹⁷ Knowing the population and location of these tracts and counties, as well as identifying relative penetration rates between technologies more generally, could be immensely helpful in developing Universal Service policies. Similarly, understanding how these analyses square with the state-level and nationwide data presented in Table 19,¹⁸ which seems to indicate ubiquitous cable-modem deployment nationwide, would also assist in determining broadband policy overall.

Fifth, there are indications that some of the analyses may be incorrect. For example, several tracts and counties show penetration ratios in excess of 1.0.¹⁹ The Commission's maps also indicate that the Channel Islands, a National Park off the coast of California, is served by seven fixed-line residential broadband providers while residents of Staten Island, New York have a choice of only one, two, or three such providers.²⁰ Similarly, the report suggests that in four contiguous tracts in the northeastern part of the District of Columbia, each comprising less than one square mile, there is a wide variation

¹⁵ *High-Speed Internet Access Report* at 25.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 43.

¹⁹ *See e.g., id.* at 24, 25, 26, 27 (charts 17-18 and tables 11-12).

²⁰ *See id.* at 35. The Channel Islands are grouped in the same Census Tract (29.10) as the rural area to the north and west of the city of Santa Barbara, and we recognize that the way the tract is drawn may have caused the Commission to make this strange finding. Nevertheless, it is somewhat perplexing that this mostly rural mountainous area has seven providers of residential fixed-line service. Moreover, the choice to depict the Channel Islands itself as being highly served does call into question the value of presenting the data in such a manner without further explanation. Identifying the names of the reported providers, as well as a four-firm concentration ratio or HHI, would more accurately depict the realities of broadband service provision in these areas.

in the number of service providers offering broadband Internet access to each of the four tracts. One tract shows zero providers; the second shows one-to-three; the third shows four-to-six; and the fourth show more than seven fixed-line residential broadband providers. The notion that deployment could vary that much in such a small area seems counterintuitive at best. A comparison of Humboldt County, California, and San Francisco, California, yields similarly strange results. Tract 111 in Humboldt County, California, which has fewer than 2,000 households, shows up on the High-Speed Internet Access Report's map as having more than seven fixed-line residential providers.²¹ Yet the data reveal no tracts in San Francisco that are served by seven providers, and half of the city's tracts are reported as having one-to-three such providers.²² It seems quite unlikely that Tract 111 in Humboldt County, which has one-tenth the population density, one-thousandth the population, and a median household income that is half the median income in San Francisco,²³ has a much better market for broadband than one of the most tech-savvy cities in the United States.

Sixth, the analysis in the High-Speed Internet Access Report seems to directly contradict the National Telecommunications and Information Administration's conclusions in its efforts to implement the broadband stimulus programs established in the American Recovery and Reinvestment Act. For example, last month Vice President Joseph Biden traveled to rural north Georgia to announce an NTIA Broadband Technology Opportunities Program grant that would "improve broadband service in underserved areas and stimulate economic growth and job creation in eight counties in the North Georgia foothills."²⁴ According to the FCC's High-Speed Internet Access Report, most of this area already has between four and six providers of fixed-line broadband Internet access.²⁵ The NTIA also made a \$20.5 million grant to the South Dakota Network (SDN) "to enable the delivery of at least 10 Mbps service to more than 220 existing anchor institution customers in rural and underserved areas of the state."²⁶ But the FCC's data indicates that much of this area of eastern South Dakota had seven or more providers of fixed-line broadband service at the end of 2008, and no tract in the eastern portion of South Dakota appears on the FCC's map as unserved.²⁷

²¹ *Id.*

²² *Id.*

²³ U.S. Census Bureau, 2000 Census, <http://factfinder.census.gov> (data retrieved from the detailed tables).

²⁴ See BroadbandUSA, Connecting America's Communities, North Georgia Network Grant (2010), http://www.ntia.doc.gov/broadbandgrants/BTOPAward_NorthGeorgia_121709.pdf

²⁵ See *High-Speed Internet Access Report* at 35.

²⁶ See BroadbandUSA, Connecting America's Communities, South Dakota Network, LLC (SDN) Grant (2010), http://www.ntia.doc.gov/broadbandgrants/BTOPAward_SDakotaNetwork_121709.pdf.

²⁷ See *High-Speed Internet Access Report* at 35.

Though some of these results maybe explained either by reporting errors or the lack of granularity in Census Tracts (compared with Census Blocks), these anomalies nonetheless create confusion and raise questions about the accuracy of the information and analysis contained in the High-Speed Internet Access Report. Moreover, while these surprising findings might be explained with a better understanding of the Commission's methodology, greater transparency regarding methodology combined with the ability to review the underlying data will allow interested parties to best interpret the underlying information and participate in the policymaking process.

Indeed, the Commission itself has acknowledged some of these shortcomings. In a blog post released on February 15, 2010, the Commission recognized that

[T]he form 477 data could still be improved. To take one example, the current report does not provide sufficient information to assess competition. The FCC collects its data with a promise of confidentiality for provider-specific data, which requires that the data be aggregated for reporting purposes. Therefore today, in some of the maps in the Report, a provider is depicted as serving a census tract even if it has only a single customer there or serves only a small portion of a geographically large census tract. Because of this aggregation, the reported counts of "number of providers" cannot be interpreted as the number of competitors among which consumers can choose their broadband service. And even if they are available to the same customers, some of the offerings may not effectively compete — consumers may not view 768kbps DSL service as a close substitute for 6 Mbps cable modem service. Furthermore, in some places in the report, high-speed connections are defined for historical reasons as 200 kbps — not really broadband by any current standard. Although this threshold has been chosen to be consistent with past reporting practices, it makes some of the report's maps showing ubiquitous coverage overly optimistic.²⁸

²⁸ See Posting of Sharon Gillett, "Tracking Broadband Data . . . ," <http://blog.broadband.gov/> (Feb. 15, 2010) (emphasis added). While we certainly appreciate the Commission's forthrightness in acknowledging the shortcomings of the recent High-Speed Internet Access Report, this response makes the mistake of confusing two distinct concepts — broadband availability and broadband competition — that are each informed by two distinct sets of data. As the Commission knows quite well, it does not currently collect any data on the availability of broadband services. Instead, it is only able to use the new Census Tract subscribership data as a proxy for availability — data that is actually less granular than the old ZIP Code data that many commenters considered inadequate. While there are approximately twice as many Census Tracts as occupied non-single entity ZIP codes in the United States, in non-urban areas, the average population in a tract far exceeds the average population in a ZIP code. In the precise areas where we need more granularity on the availability of broadband, we reduce that granularity by moving from ZIP codes to tracts. Accordingly, Free Press and others have repeated urged the Commission to collective availability at the Census Block level, and the NTIA has adopted such a requirement for data reporting in its implementation of the Broadband Data

FREE PRESS'S REQUEST

I. Free Press requests the opportunity to review the data to conduct a more comprehensive analysis of subscribership to high-speed Internet access services.

Free Press requests the opportunity to review the December 31, 2008 Form 477 data to conduct several analyses of the raw Form 477 data. In addition to some of the analysis to which we allude above, we first propose to analyze competition in the local markets through a variety of straightforward metrics. For example, the amount of control each provider has over a given market (i.e. concentration), not the number of providers in the market, provides the best metric for assessing a market's competitiveness. Using the Form 477 data, we can calculate one-firm, two-firm, three-firm, and four-firm concentration ratios for each Census Tract.²⁹ We can also calculate the Herfindahl-Hirschman Index (HHI) values for each tract.³⁰ These values would themselves be important inputs into

Improvement Act. *See e.g.*, Letter from Consumer Federation of America, Consumers Union, Free Press, Media Access Project, New America Foundation, and Public Knowledge to Chairman Julius Genachowski, Federal Communications Commission, *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, *Service Quality, Customer Satisfaction Infrastructure and Operating Data Gathering*, WC Docket No. 08-190, *International Comparison and Survey Requirements in the Broadband Data Improvement Act*, GN Docket No. 09-47, *A National Broadband Plan for Our Future*, GN Docket No. 09-51 (Aug. 11, 2009).

²⁹ Of these, the four-firm concentration ratio is most often used in market analysis. The Department of Justice generally considers markets with four-firm concentration ratios above 60 percent to be a "tight-oligopoly," while markets with ratios above 80 percent indicate duopoly or monopoly power. *See* WILLIAM G. SHEPHERD, *THE ECONOMICS OF INDUSTRIAL ORGANIZATION* (1985) for further discussion of firm concentration ratios.

³⁰ The Herfindahl-Hirschman Index (HHI) is calculated as:

$$H = \sum_{i=1}^n S_i^2 \times 10,000,$$

where n = the number of firms; S_i = the share of the i th firm. The HHI is calculated based on ratios rather than percentages and the decimals are cleared by multiplying by 10,000. The Department of Justice considers a market with fewer than ten equal-sized firms to be concentrated (i.e. $HHI=1,000$). It considers a market with fewer than the equivalent of approximately 5.5-equal sized firms ($HHI = 1800$) to be "highly concentrated." Markets with an HHI between 1000 and 1800 are considered "moderately concentrated." These thresholds have been chosen based on theory, empirical evidence and experience with the exercise of market power. *See* U.S. DEPARTMENT OF JUSTICE AND FEDERAL TRADE COMMISSION, *HORIZONTAL MERGER GUIDELINES* (rev'd 1997), for a discussion of the HHI thresholds.

further econometric analysis, but could also be used to produce visual maps that are far more informative than those currently published in the High-Speed Report.³¹

Second, we propose to create more granular maps and charts reflecting subscribership to various speed tiers and technologies by type of subscriber. The Commission in its February 15th blog entry noted that there is little reason to believe a 200kbps service is substitutable for a much higher-speed service; we could conduct an analysis to hone in on the subscribership (and by crude proxy, the availability) patterns for higher-tier services. Similarly, the Commission made no use of the new granular upload speed information; we would like to explore subscribership patterns in this area as well.

Third, the Commission conducted only minor analyses of certain demographic relationships to the fixed-line penetration ratios of counties. We feel this presentation, lacking in any comparative statistical analysis, lacks information power. There are also many more aspects of demography left unexplored by the Commission. The use of Census Tracts provides a powerful analytical tool, but it has yet to be fully utilized. Along those lines, we would conduct substantial econometric analysis on the data to explore the magnitude and significance of various factors that influence broadband deployment and adoption patterns.

II. These analyses will assist the Commission in making well-informed, data-driven policy choices.

The proposed analyses have the potential to assist the Commission in making a variety of policymaking choices. What follows is a non-exhaustive list of the policy areas in which further analysis of the Form 477 data could assist in decision-making.

- **National Broadband Plan.** Chairman Julius Genachowski recently announced that the Commission's National Broadband Plan will call for 100 million American to have access to broadband Internet at speeds of 100 megabits per second.³² To achieve this goal, the FCC must develop a comprehensive understanding of which Americans have the ability to

³¹ Because Census Tracts can be large, the level of competition reflected by this analysis may be overstated. For example, it is possible that a single tract may have two or more ILECs that do not directly compete, or two or more cable companies that do not directly compete (as opposed to CLECs or cable overbuilders). In these few cases, we would correct this problem by coding the "type" of provider (ILEC, CLEC, Cable MSO, Cable Overbuilder, Other), and either drop or merge the line counts of the non-competing ILECs or Cable MSOs before calculating the firm concentration ratios or HHI values for such tracts. GAO analysts used a similar process to conclude that the median ZIP code had access to two high-speed Internet providers. *See GAO Broadband Deployment Report.*

³² FCC Chairman Julius Genachowski, Prepared Remarks at the National Association of Regulatory Commissioners' Conference (Feb. 16, 2010), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296262A1.pdf.

subscribe to high-speed Internet access, where they live, at what speeds they take service, and over what technologies. The December 2008 High-Speed Report begins to answer these questions, but the analyses set forth above could shed significant additional light on these issues.

- **Universal Service proceedings.** Better analysis regarding which areas of the country are currently unserved and underserved will be instrumental in reforming the Universal Service and assuring that funds are effectively distributed.
- **Seventh Section 706 inquiry.** Next year, the Commission will commence its seventh inquiry into whether advanced telecommunications services are being deployed to Americans in a reasonable and timely fashion.³³ This process will likely include releasing a Notice of Inquiry that poses a wide range of questions regarding the definition of broadband, its availability, and the speed at which it is being deployed to and adopted by citizens across the country.³⁴ The analyses proposed above will certainly aid in answering all of these questions.
- **Open Internet proceeding.** In the Notice of Proposed Rulemaking proposing regulations to preserve an open Internet, the Commission noted that it sees promoting competition for Internet access services as one of its key goals and asked for comment on a variety of issues surrounding competition.³⁵ While reasonable people might dispute whether net neutrality regulation might be necessary regardless of the level of competition in local markets, at a minimum we can agree that the FCC ought to have the best data and analysis available to it as it evaluates such questions.

III. The analyses will not reveal any potentially competitively sensitive information.

The analyses Free Press proposes to perform will not compromise any potentially competitively sensitive information. Releasing aggregated data, statistical analyses, and

³³ 47 U.S.C. § 1302(b).

³⁴ See, e.g., *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended By the Broadband Data Improvement Act*, GN Docket No. 09-137, *A National Broadband Plan for Our Future*, GN Docket No. 09-5113, 20-21, Notice of Inquiry, 24 FCC Rcd. 10505, 10521, 10524-25 (2009).

³⁵ See *Preserving the Open Internet*, GN Docket No. 09-191, *Broadband Industry Practices*, WC Docket No. 07-52, Notice of Proposed Rulemaking, 24 FCC Rcd. 13064, 10385, 10397-98 (2009).

econometric analyses based on the raw data collected through the Form 477 process will not cause substantial competitive harm. In this context, the Commission's established standard for treating information as confidential places the burden of proof on the provider of the information to "show by a preponderance of the evidence a case for non-disclosure consistent with the Freedom of Information Act (FOIA)."³⁶ Thus, information is "confidential" where its disclosure is likely either to "impair the Government's ability to obtain necessary information in the future" or "to cause substantial harm to the competitive position of the person from whom the information was obtained."³⁷

Broad disclosure of Form 477 analysis is unlikely to produce competitive harm. First and foremost, the underlying data which Free Press would analyze is now 14 months old. In a dynamic industry, such a delay greatly ameliorates the competitive harm that could possibly be posed by public disclosure. Second, much of the data reported in Form 477 is publicly available through other sources, including corporate web sites that display availability of service, quarterly earnings calls, and other state and federal proceedings.³⁸ Third, similar data may become available through public disclosure of filings submitted to the National Telecommunications and Information Administration in connection with the State Broadband Data and Development Program.³⁹

Most importantly, Free Press proposes to release only aggregated data and analysis. It will not release individual provider names and would identify carriers by type. We also do not propose to release aggregated information for every individual tract. For example, Free Press might report that in X percent of counties, subscribers are served by one cable company, one telephone provider, and several other providers, but that the cable and phone providers together hold a 95 percent market share. These types of conclusions, especially if they describe the markets as they existed as of December 2008, do not raise competitive concerns. In particular, they certainly will not allow direct competitors to poach subscribers from each other.

³⁶ See *2000 Data Order*, 15 FCC Rcd. at 7758 (citing *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd. 24816, 24850 (1998) (*1998 Confidentiality Order*)).

³⁷ *1998 Confidentiality Order*, 13 FCC Rcd. at 24819 (citing *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974)). As we discuss at greater length below, in practice, the Commission has relaxed the burden of proof by delaying the determination of confidentiality of the information until a request for the information is filed. Nevertheless, this practice does not change the substantive standard for confidentiality. See *2000 Data Order*, 15 FCC Rcd at 7758-59 ("Assessment of the confidentiality of the information is made on a case-by-case basis and action on confidentiality requests is routinely deferred until a request for inspection is made.") (citing *1998 Confidentiality Order*, 13 FCC Rcd at 24855-56).

³⁸ See Comments of Free Press 296-301, *A National Broadband Plan for Our Future*, GN Docket No. 09-51 (2009) (*Free Press National Broadband Plan Comments*).

³⁹ See *State Broadband Data and Development Grant Program*, 74 Fed. Reg. 40,569 (2009).

Substantial public disclosure of even minimally aggregated data and analysis is similarly consistent with the Broadband Data Improvement Act (BDIA).⁴⁰ The BDIA requires the Commission to offer “aggregate data” based on Form 477 filings to “eligible entities” for purposes of facilitating the provisions of the BDIA.⁴¹ It also establishes a grant program to “identify and track the availability and adoption of broadband services within each State.”⁴² The Commission is currently conducting a proceeding to identify the appropriate level of aggregate data to disclose for purposes of the BDIA.⁴³ But any determinations as to the appropriate aggregation level for BDIA *would not* apply to aggregations for other purposes, and certainly would not circumscribe the general standard of substantial harm to competition. The BDIA also contains language intended to safeguard data after it has been disclosed to eligible entities under the state grant program; however, this safeguard is limited only to disclosures “submitted by the Commission or a broadband provider to carry out the provisions of this title” and does not apply to the entire Form 477 data collection process.⁴⁴

Finally, allowing interested parties access to the raw Form 477 data is consistent with the Commission’s prior commitments to disclosure in the Form 477 context. In the 2000 order establishing the Form 477 process, the Commission stated that “the value of [Form 477] data collection is significantly enhanced by making as much information as possible available to the public.”⁴⁵ Allowing the release of aggregated data and analyses conducted by third parties increases the utility of the data collected.

IV. The Commission’s treatment of Form 477 data represents a departure from precedent and undermines its commitment to data-driven, transparent policymaking.

Though we do not request full public disclosure of the Form 477 data here, we note that the Commission’s overweening caution in addressing the treatment of these data reflect a departure from prior policies and from the Commission’s own stated decision-making principles.⁴⁶

⁴⁰ *Broadband Data Improvement Act*, Pub. L. No. 110-385, 122 Stat. 4096 (2008).

⁴¹ *Id.* §106(h)(1).

⁴² *Id.* §106(b)(1).

⁴³ *Comment Sought on Providing Eligible Entities Access to Aggregate Form 477 Data As Required By the Broadband Data Improvement Act*, WC Docket No. 07-38, GN Docket Nos. 09-47, 09-51, 24 FCC Rcd. 9210 (2009).

⁴⁴ *Broadband Data Improvement Act* §106(h)(2).

⁴⁵ *See 2000 Data Order*, 15 FCC Rcd. at 7758.

⁴⁶ *See, e.g.*, Chairman Julius Genachowski, Remarks to the Staff of the Federal Communications Commission 4 (June 30, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291834A1.pdf (“We will be open and transparent. Our policy decisions will be fact-based and data-driven.”).

The Commission has historically embraced a policy of public disclosure of information wherever possible. Throughout other reporting processes, including ARMIS reports, cable operator reports, cable signal leakage reports, wireless license information, and broadcast license data, the Commission has held broad public disclosure to be paramount.⁴⁷ The Commission's initial aggregations of Form 477 data and its decision to present the information publicly "in a way that does not identify the individual provider data"⁴⁸ represented both a departure from established Commission precedent and a step above and beyond the protections required by the Commission's confidentiality rules.⁴⁹

The Commission's approach to the Form 477 process has undermined transparency in several key ways. First, and most egregiously, the Commission has effectively exempted providers from demonstrating that Form 477 data ought to be treated confidentially. The Commission's own rules establish that the filers bear the ultimate burden of demonstrating confidentiality of filed data.⁵⁰ Where the Commission is not obligated under its rules to keep filed information secret pursuant to a compelling showing of confidentiality, the rules prescribe that Commission make the information public.

In the context of Form 477, the Commission has completely inverted this process while professing to adhere to its underlying standards. In 1998, the Commission determined that it would presume confidentiality until challenged; in 2000, the Commission lowered the transaction costs of exercising this presumption in Form 477 substantially, creating a check-box that filers could use to indicate that all data submitted in the report is confidential.⁵¹ In practice, a spirit of public disclosure limited only by a narrow standard of "substantial harm to competition" has transformed into a mere check box – an approach that has persisted despite ongoing transformations of the data being collected and of the market and industry being studied.

A check-box does not take the place of a showing of harm to competition and does not demonstrate a need for data secrecy. It should not stand in the way of the public benefits that could be gained through greater disclosure of data and analysis based on Form 477 filings.

Second, to the extent that the Commission's decisions to conduct various analyses at an extremely high level were based on confidentiality concerns, those decisions reflected

⁴⁷ See *Free Press National Broadband Plan Comments* at 289-94.

⁴⁸ See *2000 Data Order*, 15 FCC Rcd. at 7760.

⁴⁹ See *Free Press National Broadband Plan Comments* at 294-301.

⁵⁰ See 47 C.F.R. §§ 0.457(d)(2), 0.459(b) (requiring that parties seeking to withhold material from public inspection file a request, including a detailed statement of the need for secrecy that includes, among other statements, an explanation of "how disclosure of the information could result in substantial competitive harm"). Additionally, even when the burden of confidentiality has been met by a filer, individual access to the sensitive information may still be gained through a "persuasive showing as to the reasons for inspection." See 47 C.F.R. §§ 0.457(d)(2), 0.461.

⁵¹ *2000 Data Order*, 15 FCC Rcd. at 7759.

too much caution and insufficient recognition of the importance of developing more granular analyses. For example, many of the High-Speed Internet Access Report's analyses are conducted at the national⁵² or state⁵³ level. Given the number of subscribers in each state and the number of distinct local markets even in small and sparsely populated states, it seems unlikely that significant competitive harm would result from a more detailed presentation of the data. Certainly, no party has identified such harm, except for in the most general manner.⁵⁴ Some redactions are especially egregious: The total number of lines *in the state of Hawaii* is redacted. The percentage of ILEC lines that are DSL capable is redacted in five states: Connecticut, Delaware, Hawaii, Massachusetts, and Rhode Island. The number of DSL lines in Alaska is given, but the number of cable modem lines is redacted. The number of total connections *nationwide* capable of delivering 10 Mbps down and 1.5Mbps up is redacted, even though that information would say nothing about the firm's that deploy such technology, the types of technology that support such speeds, or even in which states such subscribers live. To the extent that these omissions are driven by confidentiality concerns, they far exceed the Commission's stated standards, and providing access to these data would not pose competitive harm.

V. Any remaining confidentiality concerns will be mitigated by issuing a protective order.

Even though Free Press may dispute the need for the Commission's overbroad protection of the Form 477 data, it is willing to alleviate the Commission's confidentiality concerns by agreeing to abide by a protective order, which will safeguard any potentially sensitive information. A proposed protective order is attached to this letter as Exhibit A. As set forth in the Proposed Order, parties reviewing the Form 477 would be required to review the data at the Commission's premises, would not be allowed to copy the raw data, and would be required to sign a nondisclosure agreement stating that they would use their analyses solely to comment on policy issues currently facing the Commission or to comment on issues that may come before the Commission in the future. Using the data for anticompetitive purposes would result Commission sanctions.

The Commission has previously adopted similar procedures in the context of the 2006 Quadriennial Review of media ownership rules. During that proceeding, various commenters requested access to data underlying ten studies commissioned in connection with reviewing the rules. The Commission granted access to the data subject to two protective orders intended to preserve the confidentiality of any sensitive information.⁵⁵ In

⁵² See e.g., *High-Speed Internet Access Report* at 16, 17, 21, 22 (tables 6-9).

⁵³ See e.g., *High-Speed Report* at 34, 36, 38, 40, 42, 43, 44, 46 (tables 14-21).

⁵⁴ Indeed, assertions of confidentiality have gotten more absurd in recent months. For example, some providers have objected to the disclosure of information that is public by definition, such as advertised pricing. See *Free Press National Broadband Plan Comments* at 300.

⁵⁵ *2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 06-121, 2002 *Biennial Regulatory*

so doing, the Commission recognized that granting access to the data would “assist the public with providing useful comments and thoughtful, well-researched analysis of the Commission’s economic studies.”⁵⁶ Indeed, the Commission has even granted protective orders allowing third parties access to confidential documents in the context of merger proceedings, which we imagine involve much more competitively sensitive information.⁵⁷ Free Press’s proposed protective order largely tracks the one issued by the Commission’s Media Bureau in connection with 2006 Quadriennial Review. The adoption of these established procedures ought to quell any lingering confidentiality concerns.

VI. Reliance on the High-Speed Internet Access Report in Commission decision-making, without further outside analysis, could subject the Commission to a Data Quality Act complaint.

Finally, the Commission should allow outside researchers to analyze the Form 477 data because if it fails to do so, it may be vulnerable to a Data Quality Act complaint. The High-Speed Internet Access Status Report reflects the Commission’s first attempt to analyze the December 31, 2008 Form 477 data. Relying on this report without further analytical development and peer review would be a mistake.⁵⁸ The Data Quality Act was enacted to ensure and maximize the quality, objectivity, utility, and integrity of information disseminated by federal agencies.⁵⁹ Under the Act, the Office of Management and Budget

Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 02-277, *Cross-Ownership of Broadcast Stations and Newspapers*, MM Docket No. 01-235, *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations In Local Markets*, MM Docket No. 01-317, *Definition of Radio Markets*, MM Docket No. 00-244, Protective Order, 22 FCC Rcd. 16591 (2007); *2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 06-121, *2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 02-277, *Cross-Ownership of Broadcast Stations and Newspapers*, MM Docket No. 01-235, *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations In Local Markets*, MM Docket No. 01-317, *Definition of Radio Markets*, MM Docket No. 00-244, Second Protective Order, 22 FCC Rcd. 18137 (2007) (*Second Protective Order*).

⁵⁶ *Second Protective Order*, 22 FCC Rcd. at 18138.

⁵⁷ See *Applications filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, WC Docket No. 09-95, Protective Order, 2009 WL 4923064 (2009).

⁵⁸ Indeed, the agency already appears to disclaim the report’s probative value in its recent blog post. Posting of Sharon Gillett, “Tracking Broadband Data . . .,” <http://blog.broadband.gov/> (Feb. 15, 2010).

⁵⁹ 44 U.S.C. § 3516 note (2001).

— the agency primarily tasked with establishing guidelines under the statute⁶⁰ — sets overall guidelines for the dissemination of influential scientific, financial, or statistical information.⁶¹ Under these guidelines, “[i]f an agency is responsible for disseminating influential scientific, financial, or statistical information, agency guidelines shall include a high degree of transparency about data and methods to facilitate the reproducibility of such information by qualified third parties.”⁶² The Commission itself defines “influential” information as information that “will have or does have a clear and substantial impact on important public policies or important private sector decisions.”⁶³ And, qualified members of the public should be able to able to conduct “an independent reanalysis of the agency’s conclusions.”⁶⁴ Here, the agency’s analyses clearly have not been subjected to any kind of peer review; it has offered limited transparency into its methodology; and it has not yet allowed any qualified members of the public to conduct independent analyses of the data. Allowing outside researchers to test and elaborate on the conclusions contained in the most recent High Speed Report both facilitates good policymaking and complies with applicable law.

Conclusion

Allowing Free Press and other outside researchers to examine the Commission’s Form 477 data under a protective order will benefit the agency and its policymaking process in a variety of ways: it will (1) allow the Commission to take advantage of analyses conducted by those outside researchers in numerous proceedings, (2) test the FCC’s own conclusions as presented in the High-Speed Internet Access Report, (3) increase transparency to the data relied upon by the agency in making critical decisions, and (4) safeguard against any potentially confidential information contained in the underlying raw data. The Commission should grant Free Press’s request to examine the data and should issue a protective order accordingly.

Respectfully submitted,

_____/s/_____

Ben Scott
Derek Turner
Aparna Sridhar
Chris Riley

⁶⁰ *See id.*

⁶¹ *See* Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication, 67 Fed. Reg. 8452, 8460 (2002).

⁶² *Id.*

⁶³ *Implementation of Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Pursuant to Section 515 of Public Law No. 105-544*, Notice of Information Quality Guidelines, 17 FCC Rcd. 19890, 19895 (2002).

⁶⁴ *Id.*

Free Press, Washington, D.C.
202-265-1490
asridhar@freepress.net

Exhibit A

Proposed Protective Order

**Before the Federal Communications Commission
Washington, D.C. 20554**

In the Matters of)	
)	
Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act)	GN Docket No. 09-137
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Preserving an Open Internet)	GN Docket No. 09-191
)	
Broadband Industry Practices)	WC Docket No. 07-52

PROTECTIVE ORDER

1. The Commission collects data semiannually on subscribership to high-speed Internet access.¹ This information, collected pursuant to the FCC's Form 477 process, is invaluable to the Commission's decision-making. We have relied on Form 477 data in our periodic inquiry to the adequate and timely deployment of advanced telecommunications capability to all Americans.² The FCC may also rely on these data in other proceedings, including proceedings that emerge from the Commission's proposed National Broadband Plan³ and our pending proceeding regarding preserving an open Internet.⁴ Recently, commenters have requested access to the Form 477 data in order to provide data analysis and commentary in these

¹ See *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd. 7717 (2000) (establishing Form 477 process); *Local Telephone Competition and Broadband Reporting*, WC Docket No. 04-141, Report and Order, 19 FCC Rcd. 22340 (2004).

² See, e.g., *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act Of 1996, as Amended By the Broadband Data Improvement Act*, GN Docket No. 09-137, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Notice of Inquiry, 24 FCC Rcd. 10505, 10537 (2009).

³ American Reinvestment and Recovery Act, Pub. L. No. 111-5, § 6001, 123 Stat. 115 (2009)

⁴ See *Preserving the Open Internet*, GN Docket No. 09-191, *Broadband Industry Practices*, WC Docket No. 07-52, Notice of Proposed Rulemaking, 24 FCC Rcd. 13064 (2009).

proceedings. Because we believe that our deliberative processes would be aided by that analysis and commentary, we issue this protective order to grant interested parties limited access to the data.

2. This Order establishes procedures for review by interested parties of the Form 477 data reported as of December 31, 2008. This Order is not intended to constitute a resolution of the merits concerning whether any Form 477 data would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 C.F.R. § 0.442.

3. Definitions

a. Authorized Representative: An “Authorized Representative” is limited to:

- i. Counsel for the Reviewing Parties, as (as that term is defined below), including in-house counsel and their associated attorneys, paralegals, clerical staff, and other employees, to the extent reasonably necessary to render professional services by counsel for the Reviewing Parties;
- ii. Specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service or otherwise engaged to prepare material for the express purpose of formulating filings in this docket, except that disclosure to persons in a position to use this information for competitive commercial or business purposes shall be prohibited; and
- iii. Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper.

b. Commission: “Commission” means the Federal Communications Commission or any employee, consultant, or agent of the Commission acting pursuant to, and within the scope of, their official responsibilities to the Commission.

c. Declaration: “Declaration” means Attachment A to this Protective Order.

d. Form 477 Data: “Form 477 Data” means data submitted by high-speed Internet access providers on the FCC’s Form 477, as created by *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd. 7717 (2000) and modified by *Local Telephone Competition and Broadband Reporting*, WC Docket No. 04-141, Report and Order, 19 FCC Rcd. 22340 (2004), *Development of Nationwide Broadband*

Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice Over Internet Protocol (Voip) Subscriberhip, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, 23 F.C.C.R. 9691 (2008), and *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice Over Internet Protocol (Voip) Subscriberhip*, WC Docket No. 07-38, Order on Reconsideration, 23 F.C.C.R. 9800 (2008). The term “Form 477 Data” refers only to the data that reflects provision of services as of December 31, 2008.

- e. Reviewing Party: “Reviewing Party” means a person or entity reviewing or seeking in good faith to review the Form 477 data only for the purpose of reviewing the underlying information and participating in Commission proceedings which may rely on analyses of that data, including but not limited to the *Preserving an Open Internet* proceeding, GN Docket No. 09-191, and FCC’s not-yet-initiated Seventh Section 706 Inquiry.

4. Access to Form 477 Data. The Form 477 Data shall only be made available to the Commission staff and to Authorized Representatives of the Reviewing Parties. Before any Authorized Representative of a Reviewing Party may obtain access to the Data Sets, such Authorized Representative must execute the attached Declaration. Such executed Declarations must be furnished to the Wireline Competition Bureau prior to on-site review of one or more Data Sets. The Reviewing Party shall not be deemed, by reason of this Protective Order, to have waived the opportunity to argue before the Commission or any other appropriate body that Form 477 Data is not confidential or privileged in nature.

5. Permissible Disclosure. An Authorized Representative of a Reviewing Party may disclose information contained in the Form 477 Data to other Authorized Representatives, as defined in paragraph 3 of this Protective Order, only after advising such Authorized Representatives of the terms and obligations of the Protective Order. In addition, before Authorized Representatives may obtain access to the Form 477 Data, each Authorized Representative must execute the attached Declaration.

6. Inspection of Data Sets. The Data Sets shall be maintained by the Commission for inspection at its headquarters consistent with the terms of this Protective Order. An Authorized Representative shall give Wireline Competition Bureau staff reasonable advance notice of its intent to review the Form 477 Data.

7. Copies of the Form 477 Data. Authorized representatives may not remove the Form 477 Data, or copies thereof, from the agency headquarters.

8. Use of the Form 477 Data. Reviewing Parties shall use the Form 477 Data, and any information derived therefrom, only for the purpose of participating in FCC proceedings. Information derived from the Form 477 Data shall not be used by any person granted access under this Protective Order for any other purpose and shall not be used or disclosed except in accordance with this Protective Order. This provision shall not preclude the use of any material or information that is in the public domain or has been lawfully acquired by any other person who has not had access to the Form 477 Data.

9. Copies of Analysis Prepared from the Form 477 Data. A Reviewing Party who completes and returns the attached Declaration may save electronic copies of his or her analysis on a removable disk or similar electronic storage device. The analysis document(s) or file(s) saved to such a removable disk/other electronic storage medium may not contain any portion of the Form 477 Data in untransformed or raw form.

10. No patent, copyright, trademark or other intellectual property rights are licensed, granted or otherwise transferred by this Protective Order or any disclosure hereunder, except for the right to use information in accordance with this Protective Order. Reviewing Parties may use information derived from the Form 477 Data to conduct their own analyses. A Reviewing Party's analysis shall not reveal untransformed or raw Form 477 Data.

11. Violations of Protective Order. Should a Reviewing Party that has properly obtained access to the Form 477 Data under this Protective Order violate any of its terms, it shall immediately convey that fact to the Wireline Competition Bureau. Further, should such violation consist of improper disclosure of information derived from the Form 477 Data, the violating party shall take all necessary steps to remedy the improper disclosure or use. The Commission retains authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to the Form 477 Data.

13. No Waiver of Confidentiality. Disclosure of information derived from the Form 477 Data shall not be deemed a waiver of any privilege or entitlement to confidential treatment of the data by its owner. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any separate proceedings; and (c) agree that accidental disclosure of information derived from the Form 477 Data shall not be deemed a waiver of the privilege.

14. Authority. This Protective Order is issued pursuant to sections 4(i) and 4(j) of the Communications Act as amended, 47 U.S.C. §§ 154(i), (j), and 47 C.F.R. §§ 0.91, 0.291, and 0.457(d).

ATTACHMENT A

DECLARATION

In the Matters of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 09-137; A National Broadband Plan for Our Future, GN Docket No. 09-51; Preserving the Open Internet, GN Docket 09-191; Broadband Industry Practices, WC Docket 07-52

I, _____, hereby declare under penalty of perjury that I have read the Protective Order that has been entered by the Wireline Competition Bureau in these dockets, and that I agree to be bound by its terms pertaining to the treatment of the Form 477 Data and the information derived therefrom. I understand that this information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes specified in the Protective Order. I further affirm that any written, electronic, or printed analyses or material that I create (or cause to be created) in the course of my review shall not reveal the raw, untransformed information contained in the Form 477 Data. I acknowledge that a violation of the Protective Order is a violation of an order of the Wireline Competition Bureau.

(signed) _____
(printed name) _____
(representing) _____
(title) _____
(employer) _____
(address) _____
(phone) _____
(date) _____